

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CESAR PEREZ,

Plaintiff,

**ORDER**

15-CV-5287 (MKB) (RER)

v.

LOMA COFFEE SHOP INC. and LUIS  
ZACARIAS,

Defendants.

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MARGO K. BRODIE, United States District Judge:

Plaintiff Cesar Perez commenced this action on September 12, 2015 against Defendants Loma Coffee Shop Inc. and Luis Zacarias, alleging violations of the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.* (Docket Entry No. 1.) On February 21, 2016, Plaintiff filed an affidavit of service with the Court, stating that service of the summons and Complaint had been executed on Defendant Loma Coffee Shop Inc. on September 23, 2015. (Docket Entry No. 5.) On February 22, 2016, Plaintiff filed an affidavit of service with the Court, stating that service of the summons and Complaint had been executed on Defendant Zacarias on September 26, 2015. (Docket Entry No. 6.)

On March 15, 2016, Magistrate Judge Ramon E. Reyes, Jr. issued an order noting that no action had been taken in the case since service of the Summons and Complaint. (Order dated March 15, 2016.) Judge Reyes directed that, by March 25, 2016, the parties had to file a stipulation extending Defendants' time to answer, Plaintiff had to move for the entry of a notation of default, or Defendants had to have filed an answer to the Complaint. (*Id.*) Judge Reyes also warned Plaintiff that, in the absence of any of these actions, he would deem Plaintiff

to have abandoned the action and recommend to the Court that the case be dismissed for failure to prosecute. (*Id.*) Plaintiff has not responded to Judge Reyes' March 15, 2016 order. By Report and Recommendation dated April 5, 2016 (the "R&R"), Judge Reyes recommended that the Court dismiss Plaintiff's claims for failure to prosecute. (R&R dated April 5, 2016.) Plaintiff has not opposed the R&R.

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "[F]ailure to object timely to a magistrate judge's report may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object." *Eustache v. Home Depot U.S.A., Inc.*, 621 F. App'x 86, 87 (2d Cir. 2015) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate judge's Report and Recommendation if the party fails to file timely objections designating the particular issue." (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002))).

The Court has reviewed the unopposed R&R and, finding no clear error, the Court adopts Judge Reyes' R&R pursuant to 28 U.S.C. § 636(b)(1). This action is dismissed for failure to prosecute. The Clerk of Court is directed to close this case.

SO ORDERED:

s/ MKB  
MARGO K. BRODIE  
United States District Judge

Dated: May 4, 2016  
Brooklyn, New York